

JOSEPH P. RUSSONIELLO (CSBN 44332)  
 United States Attorney  
 JOANN M. SWANSON (CSBN 88143)  
 Chief, Civil Division  
 MELANIE L. PROCTOR (CSBN 228971)  
 Melanie.Proctor@usdoj.gov  
 Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
 San Francisco, California 94102-3495  
 Telephone: (415) 436-6730  
 FAX: (415) 436-7169

Attorneys for Defendant

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

DMYTRO VEROVKIN,	)	No. C 07-3987 CW
	)	
Plaintiff,	)	
	)	
v.	)	
	)	OPPOSITION TO PLAINTIFF'S MOTION
DAVID N. STILL, District Director, United	)	TO REVIEW CLERK'S TAXATION OF
States Citizenship and Immigration	)	COSTS
Services,	)	
	)	
Defendant.	)	

On December 21, 2007, the Court granted Plaintiff's motion for summary judgment, and entered judgment in his favor. Electronic Docket, No. 22, 23. Plaintiff filed his bill of costs on March 4, 2008, seventy-four days after entry of judgment. See Electronic Docket, No. 27. Nonetheless, Plaintiff asks the Court to excuse his untimely filing under Fed. R. Civ. P. 60(b). He argues that he made a mistake in calculating the due date for his bill of costs, and that he believed "the Defendant's right to appeal must expire before the judgment becomes final." Plaintiff's Motion, p. 1.

Under the Local Rules, "[n]o later than 14 days after entry of judgment or order under which costs may be claimed, a prevailing party claiming taxable costs must serve and file a bill of costs." Civ. L.R. 54-1(a) (emphasis added). The rules further provide that "[a]ny party who fails to file a bill of costs within the time period provided by this rule will be deemed to have waived costs." Civ.

OPPOSITION  
 No. C 07-3987 CW

1 L.R. 54-1(c). The rule is clear: Plaintiff's bill of costs was due to be filed within 14 days of an order  
 2 or entry of judgment. Civ. L.R. No. 54-1(a). The rule makes no reference to a "final" judgment,  
 3 as Plaintiff seems to have read into the rule. Plaintiff's Motion and Affidavit. Similarly, the rule  
 4 regarding taxation of costs makes no mention of a "final" judgment. Civ. L.R. 54-4.

5 The Equal Access to Justice Act ("EAJA") is as clear as the Local Rules: the standard for  
 6 seeking costs is delineated separately from the standard for seeking fees and other expenses.  
 7 Compare 28 U.S.C. § 2412(a)(1) with § 2412(d). Furthermore, only the subsection covering fees  
 8 and other expenses requires a judgment to be final before the party submits an application for fees  
 9 and other expenses. 28 U.S.C. § 2412(d)(1)(B). EAJA plainly states that "a judgment for costs, as  
 10 enumerated in section 1920 of this title" does not include the fees and expenses of attorneys, 28  
 11 U.S.C. § 2412(a)(1), and includes a clear definition of "fees and other expenses." 28 U.S.C.  
 12 § 2412(d)(2)(A). The expenses described in subsection (d)(2)(A) are quite different than those  
 13 allowed under 28 U.S.C. § 1920, and do not include the costs sought by Plaintiff. Compare 28  
 14 U.S.C. § 2412(d)(2)(A) with § 1920; see Plaintiff's Bill of Costs, Electronic Docket, No. 27, dated  
 15 March 4, 2008. Defendant notes that Plaintiff has displayed a level of sophistication throughout this  
 16 litigation that belies his argument that he misunderstood the distinction between costs and fees. It  
 17 is clear that the 14-day time period applies to Plaintiff's bill of costs. Civ. L.R. 54-1(c).

18 Had Plaintiff researched the rule as carefully as he claims, he would have quickly seen that  
 19 the bill was due within 14 days after the Court's December 21, 2007 order and entry of judgment.  
 20 See San Francisco Bay Area Rapid Transit Dist. v. Spencer, No. C 04-04632 SI, 2007 WL 1450350,  
 21 at\*13-14 (N.D. Cal. May 14, 2007) (strictly applying the local rule to require that the bill be filed  
 22 within 14 days of the court's initial entry of judgment, and not 14 days from the corrected judgment  
 23 filed six days later). At issue in Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership,  
 24 507 U.S. 380 (1993), was whether an attorney's complete ignorance of a deadline could be excused.  
 25 Id. at 1492-93. Here, Plaintiff does not plead ignorance of the deadline set by the local rule, but  
 26 rather, admits that he read into the rule a term that is not there. See Plaintiff's Declaration, p. 1 ("I  
 27 therefore interpreted local rule 54-1(a) to allow 14 days after the entry of final judgment . . .")  
 28 (emphasis in original). Accordingly, Plaintiff's alleged mistake is not excusable under Fed. R. Civ.

1 P. 60(b).

2 Finally, Plaintiff is correct in one regard: Defendant did not file any objections to his bill of  
3 costs; however, Plaintiff's bill was so clearly out of time that no opposition appeared to be  
4 necessary. Civ. L.R. 54-1(c). Regardless, Defendant notes that the filing fee Plaintiff alleges he  
5 paid to the agency for his motion for reconsideration is not recoverable. 28 U.S.C. § 1920.  
6 Accordingly, even without objection, such an award is beyond the Court's discretion. See World  
7 Triathlon Corp. v. Dunbar, – F. Supp. 2d –, 2008 WL 763238, at \*13 (D. Hawai'i Mar. 19, 2008)  
8 (finding that courts may only tax the costs specified in § 1920). On March 25, 2008, undersigned  
9 counsel contacted Plaintiff regarding this objection, and made a reasonable offer of settlement.  
10 Plaintiff has declined the offer. See Declaration of Melanie Proctor.

11 Defendant respectfully requests the Court to deny Plaintiff's motion.

12 Dated: March 27, 2008

Respectfully submitted,

13 JOSEPH P. RUSSONIELLO  
14 United States Attorney

15 /s/  
MELANIE L. PROCTOR  
16 Assistant U.S. Attorney  
17 Attorneys for Defendant  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28